

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 1 Records Reproduction and Removal in Licensed CCL Facilities

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held June 16, 2004, as follows:

June 16, 2004
Office Building # 9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on June 16, 2004.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT: Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814

TELEPHONE: (916) 657-2586 FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Title 22, Division 6, Chapter 1 (General Licensing Requirements), Sections 80044 (Inspection Authority of the Licensing Agency), 80045 (Evaluation Visits), 80066 (Personnel Records), and 80070 (Client Records); Chapter 5 (Group Homes), Section 84063 (Accountability); Chapter 8 (Residential Care for the Elderly), Sections 87344 (Inspection Authority of the Licensing Agency), 87345 (Evaluation Visit), 87566 (Personnel Records), 87570 (Resident Records), and 87571 (Register of Residents); Chapter 8.5 (Residential Care Facilities for the Chronically Ill), Sections 87844 (Inspection Authority of the Department or Licensing Agency), 87866 (Personnel Records), and 87870 (Resident Records); Chapter 9.5 (Foster Family Agencies), Section 88069.7 (Content of Certified Family Home or Licensed Foster Family Home Case Record), and 88070 (Children's Case Records); Chapter 9 (Adoption Agencies), Sections 89119 (Board Meetings - Private Adoption Agencies), and 89182 (Content of Case Record); Chapter 9.5 (Foster Family Agencies), Sections 89244 (Inspection Authority of the Licensing Agency), 89245 (Evaluation Visits), 89370 (Children's Records), and 89566 (Personnel Records for Specialized Foster Family Homes); Division 12, Chapter 1 (Child Care Center), Sections 101200 (Inspection Authority of the Department), 101201 (Evaluation Visits), 101217 (Personnel Records), and 101221 (Child's Records); and Chapter 3 (Family Child Care Homes), Sections 102391 (Inspection Authority of the Department) and 102392 (Site Visits).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulations were developed, in large part, as the result of a federal district court decision that held that licensing staff cannot remove records from a licensed facility for copying unless expressly authorized by the regulations or consented to by the licensee. (See *Golden Day Schools, Inc. v. Pirillo*, (C.D. Cal. 2000) 118 Federal Supplement 2d 1037.) In the *Golden Day* case, employees of the Community Care Licensing Division (CCLD) of the California Department of Social Services (CDSS) made site visits in response to a complaint to two child care centers in South Central Los Angeles. Accompanied by officers of the Los Angeles Police Department, the CCLD employees took various child care center files to the CCLD district office, copied the files, and returned them some hours later—all without the licensee's consent. The licensee subsequently sued the State, alleging, among other things, unreasonable seizure of facility files.

Current laws and regulations permit licensing staff to enter and inspect all licensed residential and day care facilities without advance notice; and, in some situations, to reproduce client and facility records. However, current laws and regulations do not specifically address the issue of whether licensing staff have the authority to actually remove records from licensed residential and day care facilities in order to copy them. Regulatory change is therefore necessary to specify that licensing staff may remove facility records for copying when necessary to carry out the functions of the licensing program.

By a CDSS memo issued July 24, 2001, licensing staff were directed to obtain the licensee's consent before removing files from a facility for copying. If the licensee would not give consent to remove files, licensing staff were directed to take a small copier to the facility to reproduce records; to otherwise arrange for the use of a copier at the facility; or to consider using a portable scanner or digital camera to copy records at facilities. However, these solutions are not practical for the long term.

The proposed regulations will give licensing staff the express authority to copy client or facility records, and to remove them if necessary for copying. The existing regulations do not consistently permit the copying of client or facility records, which has been a hindrance to the licensing program.

For example, one licensee of a facility being investigated refused even to let licensing staff hand-copy portions of facility files because the regulations did not clearly state that licensing staff could copy those files.

The proposed regulations will correct the situations described above. They delineate and amplify the licensing program's authority to inspect, audit, and copy client or facility records upon demand during normal business hours; and to remove them if necessary for copying. At the same time, the proposed regulations contain safeguards that prohibit the removal of emergency or health-related information (unless other copies of those documents are available) and establish standards for the safe removal and timely return of records to facilities. They cut across facility categories and apply to all licensed adult and elderly community care facilities, children's residential community care facilities, and child day care facilities. The proposed regulations will ensure that the CDSS has reasonable access to information in order to be able to better evaluate facilities, investigate complaints, and protect the health and safety of clients in care.

COST ESTIMATE

1. Costs or Savings to State Agencies: None.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 1530, 1568.072, 1569.30, and 1596.81, Health and Safety Code. Subject regulations implement *Golden Day Schools Inc. v. Pirillo* (C.D. Cal. 2000) 118 F.Supp. 2d 1037 and make specific and consistent regulations regarding the copying and removal of records.

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person:	Robin Garvey	(916) 657-2586
Backup:	Maureen Miyamura	(916) 657-2586